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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,288	10/21/2003	Terence Tucker	TUCKR-005A	4576

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/690,288	Applicant(s) TUCKER, TERENCE	
	Examiner Steven B. Pollicoff	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/18/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Objections

1. Claim 16 is objected to because of the following informalities: see line 9, the phrase "side-be-side" should read "side-by-side". Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 12 refers to "the elongate groove," a limitation not disclosed in claim 9 to which claim 12 refers and thus the limitation has improper antecedent basis. Claim 13 is rejected for being dependent on claim 12. For examination purposes, examiner will interpret claim 12 as referring to claim 10 so that the antecedent basis is proper.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Groenewold et al., (US Pat No 5,921,408).

As to claims 1,2 and 6-9, Groenewold discloses a dispenser system comprising a bin (Kral Fig 2 reference number 10) having an open bin front (Fig 2), a cartridge (reference number 18B and 18C) being removably insertable into the bin front and having at least one vertical slot (see semicircular notch above opening 24) opening to a cartridge top (reference number 24) and a cartridge side (reference number 74). Groenewold also discloses a bin cover (reference number 27) and an open bin top (Fig 2 generally) where the cover partially encloses the bin. Groenewold discloses a bottom panel (Kral Fig 2 reference number 46), a rear wall (reference number 51), opposing side walls (reference numbers 36 and 38) interconnected by the bottom panel and the rear wall (see Fig 2 generally), that the bottom panel has a vertical lip (Fig 9, see projection where bottom surface 46 intersects at hinge 30 [not labeled]; see also Fig 2 just below reference number 46 where the vertical lip extends from side wall 36 to side wall 38) extending upwardly to restrict movement of the cartridge, that the bin includes a plurality of bays (Fig 3 reference number 28) separated by divider panels (reference number 50 and 53) and configured to receive cartridges (Fig 2 generally), and a support rack (Fig 2 reference number 17; see also Fig 4) to removably mount to the bin.

With respect to claims 3 and 4, the cutlery utensils recited are being treated as merely modifying the intended use phrase of claim 1 and thus not requiring cutlery utensils.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-9,11,14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groenewold et al., (US Pat No 5,921,408) in view of Kral et al., (US Pat No 4,850,511).

With respect to claim 1, Groenewold discloses a cutlery dispenser (i.e. cartridge) where a vertical slot open to a cartridge top (Fig 2 reference number 22) and a cartridge side (reference number 16) is configured to contain a stack of the utensils such that the handles thereof protrude laterally beyond the cartridge side (Groenewold Fig 10 and 7) and wherein the vertical slot is configured such that at least one of the utensils may be removed by upward movement thereof beyond the cartridge top (Fig 2). Groenewold does not disclose a dispenser system comprising a bin and a cartridge being removably insertable into the bin through the bin front. However, Kral discloses a dispenser system comprising a bin (Kral Fig 2 reference number 10) having an open bin front (Fig 2) and a cartridge (reference number 18B and 18C) being removably insertable into the bin through the bin front (Column 1, lines 62-65). Therefore, it would have been

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obvious to one of ordinary skill in the art at the time of the invention to modify the cartridge of Groenewold to be included in a bin, as taught by Kral, for the purpose of providing a display rack that is simple and easy to use for both the consumer and vendor (Column 2, lines 20-22).

With respect to claims 2 and 17, Kral discloses that the bin has a bin cover (Kral Fig 2 reference number 27) and an open bin top (Fig 2 generally) where the bin cover partially encloses the bin (see opening to bin Fig 1 reference number 26).

With respect to claims 3,4,18 and 19, Groenewold discloses that the vertical slot is shaped/sized complementary to an outline of one of the cutlery utensils for easy restocking of the cartridge (Column 2, lines 14-16).

With respect to claims 5 and 20, Groenewold discloses that the cartridge further includes a lid member (Fig 1 reference number 22) removably engagable to the cartridge top for easy restocking (Column 4, lines 43-53).

With respect to claims 6-9, Kral discloses that the bin has a bottom panel (Kral Fig 2 reference number 46), a rear wall (reference number 51), opposing side walls (reference numbers 36 and 38) interconnected by the bottom panel and the rear wall (see Fig 2 generally), that the bottom panel has a vertical lip (Fig 9, see projection where bottom surface 46 intersects at hinge 30 [not labeled]; see also Fig 2 just below reference number 46 where the vertical lip extends from side wall 36 to side wall 38) extending upwardly to restrict movement of the cartridge, that the bin includes a plurality of bays (Fig 3 reference number 28) separated by divider panels (reference number 50

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and 53) and configured to receive cartridges (Fig 2 generally), and a support rack (Fig 2 reference number 17; see also Fig 4) to removably mount to the bin.

With respect to claim 11, while Kral does not disclose that the support rack is sized and configured to support a plurality of bins in side-by-side arrangement, it would have been an obvious design choice to one of ordinary skill in the art at the time of the invention to increase the length of the support rack such that a plurality of bins are configured in a side-by-side arrangement, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claim 14, while Kral does not disclose that the cartridge, the bin and the support rack are each fabricated of polymeric material, the reference does disclose that a portion of the dispensing system is made of plastic (Kral Column 8, lines 1-3). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to make the bin, cartridge and support rack of polymeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 16, Groenewold discloses that the cartridge has at least three vertical slots disposed in a side-by-side arrangement (Groenewold Fig 1) for different kitchen utensils (i.e. forks, knives, spoons).

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5. Claims 10,12,13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groenewold et al., (US Pat No 5,921,408) in view of Kral et al., (US Pat No 4,850,511) as applied to claims 1,9 and 16 above, and further in view of Wendt (US Pat No 4,024,590).

With respect to claims 10 and 21, Groenewold as modified above does not disclose that the support rack has an elongate groove formed in an upper portion, that the bin has a hook flange formed on a side opposite that of the bin front, and that the hook flange is configured to be removably engagable to the groove for securing the bin to the support rack. However, Wendt discloses a basin/support rack (Wendt Fig 1, reference number 1) that has an elongate groove (Fig 2 reference number 12) formed in an upper portion, that the bin (Fig 1 reference number 3) has a hook flange (Fig 2 reference number 31; see also Fig 4) formed on a side opposite that of the bin front, and that the hook flange is configured to be removably engagable to the groove for securing the bin to the support rack to support a substantial amount of weight in the bin (Column 2, lines 46-49 and 56-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support rack and bin of Kral, as modified above, to include a groove in an upper portion of the support rack and a hook flange in the bin such that the hook flange is removably engaged in the groove, as taught by Wendt, for better support and securement of the bin when heavy objects are loaded in the bin.

With respect to claim 12, Groenewold as modified above discloses that the support rack includes a pair of spaced-apart opposing side members (Kral Fig 4 at

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reference number 17 and the identical side member across from it not labeled) interconnected by a first transverse member (the open face wall between the side members). Groenewold as modified does not disclose that the elongate groove is formed in an upper portion of the first transverse member. However, Wendt discloses that the elongate groove is formed in an upper portion of the first transverse member (i.e. inner wall of basin 1 of Wendt) so that all components (support rack and bin) can be grasped securely at the same time and each can be handled separately (Wendt Column 1, lines 25-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support rack of Groenewold, as modified above, to include an elongate groove formed in an upper portion of the first transverse member, as taught by Wendt, so that all components can be retained in position securely or handled separately.

With respect to claim 13, Groenewold as modified above discloses that the support rack includes a second transverse member disposed in generally parallel spaced arrangement to the first transverse member in a tiered configuration (Kral Fig 2 reference number 51) and that the second transverse member is configured to support at least one of the bins.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groenewold et al., (US Pat No 5,921,408) in view of Kral et al., (US Pat No 4,850,511) as applied to claim 1 above, and further in view of Conner (US Pat No 5,850,784).

With respect to claim 15, Groenewold as modified does not disclose that the support rack is mounted to a rotatable base. However, Conner discloses a kitchen

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caddy that is mounted to a rotatable base to provide ready access to a desired kitchen utensil (Conner Column 4, lines 4-6). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groenewold support rack, as modified above, to include a rotatable base for easier access to a desired kitchen utensil.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gibbs (US Pat No 2,421,782) discloses a dispenser of kitchen utensils. Chisholm (US Pat No 1,661,787 discloses a tray for spoons positioned in a staggered manner.

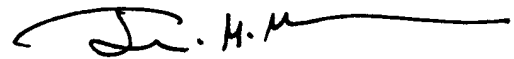
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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PRIMARY EXAMINER